

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF TRANSPORTATION

In the Matter of the Denial of Waiver
of Commercial Driver Qualification for
Casey J. Willis

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on June 13, 2005 at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401. The record closed at the conclusion of the hearing.

Stuart Alger, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101, appeared on behalf of the Department of Transportation (Department).

Casey J. Willis (Applicant), 2254 West 7th Street, Apt. 7, St. Paul, MN 55116, appeared on his own behalf without counsel.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Commissioner of Transportation, 395 John Ireland Blvd., Mail Stop 100, St. Paul, MN 55155-1899, to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF THE ISSUES

Did the Department properly deny a vision waiver to the Applicant because his driver's license was suspended for failure to have proof of automobile insurance?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. State law requires intrastate motor vehicle carriers to comply with federal regulations concerning qualifications of interstate drivers.¹ Applicants for commercial motor vehicle (CMV) licenses must receive a medical examiner's certificate demonstrating that the applicant meets the fitness standards required of a CMV license holder.² Under certain circumstances, the Commissioner may grant a waiver for intrastate transportation only to a person who fails to meet the qualifications of 49 C.F.R. (b)(3) to (b)(13). The Office of Freight and Commercial Vehicle Operations administers the waiver program.

2. Federal regulations require drivers to have visual acuity of not less than 20/40 in each eye, with corrective lenses.³ An applicant who is disqualified due to the vision standard can apply for an intrastate waiver by submitting a statement from a treating physician that describes the condition and contains the physician's professional opinion that the applicant's condition will not adversely affect the applicant's ability to operate a motor vehicle safely.⁴

3. The Commissioner shall deny an application for a waiver if, during the three years preceding the application, the applicant's driver's license has been suspended, canceled, or revoked or the applicant has been convicted of a disqualifying offense under 49 C.F.R. § 383.51(b)(2).⁵

4. Despite the statutory prohibition, the Department has had a long-standing practice of granting vision waivers in cases in which the reason for the license suspension is not driving-related, such as failure to pay child support.⁶ The Department treats these suspensions differently because in the Department's view they are not related to driving safety.⁷

5. The Applicant was a commercial truck driver who worked for Royal Foods in Hopkins, Minnesota. His right eye is lazy and has no correctable vision. He first

¹ Minn. Stat. § 221.0314, subds. 1 & 2; 49 C.F.R. §§ 391.11, 391.41.

² 49 C.F.R. §§ 391.11, 391.41.

³ 49 C.F.R. § 391.41(b)(10).

⁴ Minn. Stat. § 221.0314, subd. 3a(b)(9).

⁵ Minn. Stat. § 221.0314, subd. 3a(e).

⁶ See Minn. Stat. § 171.186, subd. 1.

⁷ Testimony of Larry Johnson.

received a vision waiver from the Department for the period from March 12, 2003, to February 20, 2005.⁸

6. On April 12, 2004, a police officer stopped the Applicant while he was driving his own vehicle. He was cited for failing to have proof of insurance.⁹ The Applicant did not respond to the citation. On July 14, 2004, the Driver and Vehicle Services (DVS) Division of the Department of Public Safety (DPS) mailed the Applicant a notice that his driving license would be suspended effective August 12, 2004, for failing to appear on the cited charge if he did not pay a fine and provide proof of insurance by that date. The notice was sent to the Applicant's permanent address, which was his mother's home.¹⁰ The Applicant does not recall receiving the notice.¹¹

7. The Applicant did not respond to the notice, and his driving license was suspended on August 12, 2004, for failing to appear in court in compliance with the citation.¹²

8. The Applicant became aware of the suspension when his employer informed him that he could not drive until his license was reinstated. The Applicant immediately paid a \$150.00 fine and provided proof of insurance to DVS. The Applicant's driving license was reinstated on August 20, 2004.¹³

9. On February 25, 2005, the Applicant submitted a vision waiver form requesting renewal of his waiver.¹⁴ In support of the application, the Applicant submitted a letter from his optometrist describing his visual acuity and concluding that the Applicant should be able to handle any type of vehicle well.¹⁵ This letter meets the standards for granting a vision waiver.¹⁶

10. As part of the waiver process, the Department examined the Applicant's driving record and learned of the suspension between August 12 and August 20, 2004. The Department also verified that the suspension was for failing to appear or pay a fine for having no proof of insurance.¹⁷

11. On February 28, 2005, the Department notified the Applicant that his request for a vision waiver was denied due to the suspension of his driver's license.

⁸ *Id.*

⁹ Minn. Stat. § 169.792, subd. 1.

¹⁰ Ex. 10.

¹¹ Testimony of Casey Willis.

¹² Ex. 9. See also Minn. Stat. § 171.18, subd. 1(10) (the commissioner may suspend the license of a driver without a preliminary hearing upon a showing that the licensee has failed to appear in court in compliance with the terms of a citation).

¹³ Ex. 11.

¹⁴ Exs. 4-7. Although two pages of the application form and the Applicant's signature were missing, the Department treated the application as if it were complete.

¹⁵ Ex. 7.

¹⁶ Testimony of Larry Johnson; Ex 8.

¹⁷ *Id.*

The notice indicated that the earliest the Applicant would be entitled to receive a waiver was August 20, 2007.¹⁸

12. On March 3, 2005, the Applicant wrote to the Department requesting reconsideration of the vision waiver denial. The Applicant noted that the denial would work a hardship on both his family and himself, by denying him employment in his job as a CMV driver.¹⁹ The Applicant requested a hearing on the denial.

13. On April 30, 2005, the Department issued a Notice and Order for Hearing setting the hearing for June 13, 2005.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department and the Administrative Law Judge have jurisdiction to consider this matter under Minn. Stat. §§ 14.50, and 221.0314, subd. 3a(f).

2. The Department gave proper notice of the hearing and has complied with all applicable procedural requirements.

3. The Commissioner may grant an intrastate waiver for a vision impairment under the standards set out in Minn. Stat. § 221.0314, subd. 3a.

4. The Applicant meets all the physical requirements for receiving a vision waiver under Minn. Stat. § 221.0314, subd. 3a.

5. The Commissioner shall deny an application if, during the three years preceding the application, the applicant's driver's license has been suspended, canceled, or revoked or the applicant has been convicted of a disqualifying offense, as defined in Code of Federal Regulations, title 49, section 383.51, paragraph (b)(2)., which is incorporated by reference.

5. Because the Applicant's driver's license was suspended in August 2004, the Commissioner has the authority to deny the Applicant's vision waiver.

Based upon the foregoing Conclusions, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

¹⁸ Ex. 13.

¹⁹ Ex. 14; Testimony of Casey Willis.

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner's decision to deny a vision waiver to Casey J. Willis be affirmed.

July 11, 2005

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape-recorded (2 tapes).

MEMORANDUM

The Commissioner has the authority to deny the Applicant's vision waiver application based on Minn. Stat. § 221.0314, subd. 3a(e); however, as the Department has recognized, the statute should be applied only to suspensions for conduct that is related to driving safety. Whether or not it is consistent with the statute, the Department's long-standing practice to grant vision waivers when suspensions are unrelated to this goal reflects a sound policy judgment.

In the view of the Administrative Law Judge, however, the failure to pay child support and the failure to provide proof of automobile insurance are both unrelated to driving safety. A failure to pay child support or to provide proof of insurance may indicate that a driver is financially irresponsible, but it says nothing about whether that person is driving safely. License suspensions in these situations are for the purpose of compelling compliance with a financial obligation to others, not to prevent an unsafe driver from being on the road. As soon as the financial obligation is met, driving privileges are reinstated.²⁰

The Department also argues that a citation for failure to provide proof of insurance is "driving-related" because it is usually issued in the context of a traffic stop. Perhaps this is usually true, although there are many other reasons why the failure to have insurance might come to the attention of the DPS, and there are a host of other reasons why a person might be stopped by the police.²¹ But

²⁰ Minn. Stat. §169.792, subd. 10 (proof of insurance); Minn. Stat. §171.186, subd. 3 (child support).

²¹ For example, Minn. Stat. §169.796 obligates DPS to conduct monthly sampling of at least two percent of Minnesota motor vehicle owners. If owners fail to respond to the request to furnish proof of insurance, their licenses shall be suspended. In addition, Minn. Stat. § 169.791, subd. 4, provides that when the driver is not the owner of the vehicle, the owner can be required to provide proof of insurance within ten days of receiving mailed notice. There is no requirement for the owner of the vehicle to have engaged in any driving conduct whatsoever. Furthermore, under certain circumstances, a person's driving license may be suspended because the person's insurance company has failed to pay a claim. See Minn. Stat. §171.182.

there is no logical basis for the further conclusion that being stopped by the police means that a person was necessarily or even likely to be driving unsafely. In this case, for example, the Applicant was cited only for the failure to have proof of insurance. No citations for driving conduct were issued.

Finally, it appears to the Administrative Law Judge that the Department's policy as applied here treats similarly situated classes of people differently, for no reason that is related to driving safety. A person who needs a CMV license for employment, but has no vision problems requiring a waiver, may have a license suspended for failure to provide proof of insurance; in such a case, the suspension alone does not disqualify the person from having a CMV license if driving privileges are later reinstated.²² A person who needs a CMV license for employment, but who needs a vision waiver, will lose the right to a vision waiver (and the license) for the exact same conduct. This result appears to be fundamentally unfair, when there is no dispute that the person otherwise meets the standards for the waiver and can drive safely. The Administrative Law Judge urges the Department to reexamine its policy, as it impacts Mr. Willis, with these considerations in mind.

K.D.S.

²² 49 C.F.R. § 391.11(b) (a person is qualified to drive a commercial motor vehicle if, among other things, the person has a currently valid commercial motor vehicle operator's license issued by a state and is not disqualified pursuant to 49 C.F.R. § 391.15). A suspension of driving privileges is a disqualification under that section only for the duration of the suspension. See 49 C.F.R. § 391.15(b)(1).